IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AARON C. BORING and CHRISTINE BORING, Plaintiffs, v. GOOGLE INC., Defendant.	))))))))))	Civil Action No. __________

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Google Inc. ("Google" or "Defendant") hereby removes the above-captioned action from the Court of Common Pleas of Allegheny County, Pennsylvania, in which it has been pending, to the United States District Court for the Western District of Pennsylvania.

Statement of Grounds for Removal:

1. On April 2, 2008, an action was commenced in the Court of Common Pleas of Allegheny County, Pennsylvania, captioned *Boring v. Google, Inc.*, Case No: GD 08-6615 (the "Action"). Google accepted service of the Complaint in Civil Action ("Complaint"), on April 28, 2008. There are no other defendants named in the Complaint. Thus, this Notice of Removal to the United States District Court for the Western District of Pennsylvania is timely because it is filed within thirty (30) days of service of the initial pleading. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999); *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 223 (3d Cir. 2005).

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2. Google has not yet responded to the Complaint and the time in which to do so has not expired; plaintiffs granted Google an extension until May 28, 2008 to answer or move against the Complaint.

3. As required by 28 U.S.C. § 1446(a), attached hereto as Exhibit A are copies of the Complaint and the Acceptance of Service filed in the Action. To date, no other pleadings or orders have been served upon Google in the Action.

4. The Action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the Action may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446. More specifically:

a. The Complaint alleges that plaintiffs reside in Allegheny County, Pittsburgh, Pennsylvania. Complaint, ¶ 1.

b. At the time of the filing of the Action, Google was, and currently is, a Delaware corporation with its principal place of business in Mountain View, California.[1]

c. Based on the face of the Complaint, and without conceding that any claim asserted by plaintiffs has merit or is properly stated, the amount in controversy in the Action exceeds $75,000, exclusive of interest and costs. *See Angus v. Shiley Inc.*, 989 F.2d 142, 145 (3d Cir. 1993) (amount in controversy for purposes of removal determined from complaint itself).

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[1] The Complaint incorrectly avers that Google is a California corporation. Complaint, ¶ 2. Even if it were, there would still be complete diversity between plaintiffs and Google.

d. Plaintiffs allege that Google drove up a road marked "private road" on which they live, came onto their property without permission, took photographs of their residence, and posted those photographs on the Internet thereby exposing plaintiffs to the risks associated with revealing private information to the public at large. Complaint ¶¶ 6, 9, 13, 15.

e. Plaintiffs further aver that the conduct alleged was intentional and or grossly reckless, thereby entitling plaintiffs to an award of punitive damages. *Id.* ¶¶ 11, 15, 19. The prayer for punitive damages must be considered in determining the amount in controversy. *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007).

f. Plaintiffs do not specify the total amount of damages sought, likely because Pennsylvania Rule of Civil Procedure 1021(b) prohibits a plaintiff from seeking a specified amount of damages. In actions where the complaint does not specify the amount of damages sought, remand is warranted only "if it appears to a legal certainty that the plaintiff *cannot* recover the jurisdictional amount." *Frederico*, 507 F.3d at 197 (emphasis in original).

g. Plaintiffs seek "in excess of $25,000" for each of their four counts. When determining amount in controversy, it is appropriate to aggregate the value of each claim. *See, e.g., Government of Virgin Islands v. Sun Island Car Rentals, Inc.*, 819 F.2d 430, 432 (3d Cir. 1987); *MGD Graphic Sys., Inc. v. A & A Bindery, Inc.*, 76 F.R.D. 66, 68 (E.D. Pa. 1977); *see generally* Charles Alan Wright *et al.*, 6A *Federal Practice & Procedure Civil*

§ 1588 (2d ed. 2008) ("The general rule is that in an action involving a single plaintiff and a single defendant, a party may aggregate all the claims he has against an opposing party in order to satisfy the requisite jurisdictional amount."). Thus, the Complaint itself puts in controversy in excess of $100,000 based purely on the minimum value of monetary relief sought.

h. Moreover, the Complaint asserts a claim for violation of the right of privacy and alleges that the conduct described in the Complaint caused them mental suffering and diminished the value of their property. Complaint ¶ 14. Compensatory and punitive damages for invasion of privacy claims in Pennsylvania have ranged from $0 to $400,000 or more. *See, e.g., Doe v. Wyoming Valley Health Care System*, No. 455C 1996, 2008 WL 517597 (C.P. Luzerne County Jan. 31, 2008) (award of $400,000); *O'Brien v. Cannon*, No. 03-CV-0262, 2003 WL 22345231 (E.D. Pa. Aug. 27, 2003) (award of $0).

i. The Complaint also alleges that plaintiffs paid a "considerable sum of money" for their home and that Google converted value of their property. Complaint, ¶¶ 5, 27. Conversion requires that interference with property be so substantial as to require a defendant to pay full value of the property. *Baram v. Farugia*, 606 F.2d 42, 44 (3d Cir. 1979). Public records, of which the Court may take judicial notice, *see, e.g., Anspach ex rel. Anspach v. City of Philadelphia, Dept. of Public Health*, 503 F.3d 256, 273 n.11 (3d Cir. 2007), reflect the value of plaintiffs' property to be assessed by the County at $106,000. *See* .http://www2.county.allegheny.pa.us/RealEstate/General.asp?CurrBloLot=0823E00136000000&.

j. In sum, based upon "a reasonable reading of the value of the rights being litigated," the Complaint plainly puts in controversy in excess of $75,000. *Angus,* 989 F.2d at 145.

Notice to Plaintiff and State Court:

Pursuant to 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal, Defendant will give written notice to Plaintiffs through their counsel and file a copy of this Notice of Removal with the Prothonotary of the Court of Common Pleas of Allegheny County, Pennsylvania.

Federal Rule of Civil Procedure 11 Certification:

Defendant is represented by the undersigned attorneys who certify, pursuant to Rule 11 of the Federal rules of Civil Procedure, that the foregoing is true and correct.

WHEREFORE, Google respectfully requests that the Action be removed to the United States District Court for the Western District of Pennsylvania.

Respectfully submitted,

May 21, 2008

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*indicates not admitted in Pennsylvania

CERTIFICATE OF SERVICE

I, Brian P. Fagan, Esquire, hereby certify that a true and correct copy of the foregoing **NOTICE OF REMOVAL** was served upon counsel of record by electronic notification and first class mail, postage prepaid, this 21st day of May, 2008 as follows:

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